In The Supreme Court of the United States

GEORGE C. SNEATHEN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for Writ of Certiorari
to the District Court of Appeal
of Florida, Fifth District

PETITION FOR WRIT OF CERTIORARI

Michael J. Snure
Florida Bar No. 363235
William R. Ponall
Florida Bar No. 421634
KIRKCONNELL, LINDSEY,
SNURE AND YATES, P.A.
Post Office Box 2728
Winter Park, Florida 32790
(407) 644-7600

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

QUESTIONS PRESENTED

1. Whether the Fifth District Court of Appeal's conclusion that Mr. Sneathen's statement to police immediately after being provided with Miranda warnings was an equivocal invocation of his right to counsel under the Fifth and Fourteenth Amendments to the United States Constitution is in conflict with previous decisions of this Court?

2. Whether the Fifth District Court of Appeal's conclusion that the State of Florida presented sufficient evidence to support Mr. Sneathen's conviction for capital sexual battery, despite the victim's recantation of her out-of court hearsay statements at trial, is in conflict with previous decisions of this Court concerning the Sixth and Fourteenth Amendments to the United States Constitution?

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OPINION BELOW

The opinion of the District Court of Appeal of Florida, Fifth District (Pet. App. at A-1), is reported at 998 So.2d 624 (Fla. 5th DCA 2008).

JURISDICTION

The judgment to be reviewed was entered by the District Court of Appeal of Florida, Fifth District, was entered on January 6,2009. (Pet. App. at A-1). The district court denied the Petitioner's timely Motion for Rehearing and Written Opinion on January 6, 2009. (Pet. App. at A-3). The nature of the district court's opinion rendered the Petitioner unable to invoke the discretionary jurisdiction of the Florida Supreme Court. Thus, the district court was the Petitioner's state court of last resort. This Court has jurisdiction pursuant to 28 U.S.C. § 1257. This case involves questions of federal law that were decided by a state court of last resort in a way that conflicts with relevant decisions of this Court.

APPLICABLE CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the United States Constitution provides, in pertinent part, "No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . ."

The Sixth Amendment to the United States Constitution provides, in pertinent part, "In all

criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him . . ."

Section 1 of the Fourteenth Amendment to the United States Constitution provides, in pertinent part, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . ."

STATEMENT OF CASE AND FACTS

The instant case involved allegations that George C. Sneathen engaged in sexual misconduct with his six-year old sister-in-law. The Amended Information in this case charged Mr. Sneathen with capital sexual battery, by having his penis penetrate or have union with the mouth of the alleged victim (Count One); lewd or lascivious molestation, by touching or fondling the sexual organ of the alleged victim (Count Two); lewd or lascivious molestation, by intentionally forcing or enticing the alleged victim to touch his penis (Count Three); and capital sexual battery, by having his penis penetrate or have union with the sexual organ of the alleged victim (Count Four). (R5 at 425).[1]

Prior to trial, Mr. Sneathen filed a Motion to Suppress Statements, Confessions, and Admissions, seeking

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[1] (R = Record on Appeal; ST = Supplemental Trial Transcripts; RS2 = Second Supplemental Record on Appeal)

suppression of the statements he made during his custodial interrogation by police. (R5 at 287). At the hearing on that motion, a videotape of Mr. Sneathen's interaction with two detectives from the Orange County Sheriff's Office was introduced into evidence. Both the State and Mr. Sneathen stipulated that Mr. Sneathen was in the custody of law enforcement at all the times depicted on the videotape. (R1 at 1-31).

The videotape introduced into evidence showed that Mr. Sneathen, immediately after being provided with *Miranda* warnings, and as one of the detectives was asking him whether he wished to be questioned with or without the presence of an attorney, made the following statement:

> **Either way that, I mean, I look at it, you guys are arresting me and locking me up. I mean, so it's probably best that I do have an attorney.**

(Evidence Index - Def's Exh. 1 - Jan. 20, 2006; R5 at 295).

After Mr. Sneathen made that statement, the detective did not cease all questioning of Mr. Sneathen, but responded by stating, "so you don't want to talk to us then?" In response to the detective's question, Mr. Sneathen indicated some desire to speak with the detectives. In doing so, Mr. Sneathen stated, "Either way you guys are locking me up. You know that." The detective replied, "Not necessarily because some things

are probably going to be explainable, but we don't know that unless we talk to you." Mr. Sneathen subsequently signed a *Miranda* waiver form and made the statements to the detectives that were the subject of his Motion to Suppress. (Evidence Index - Def's Exh. 1 - Jan. 20, 2006; R5 at 295).

The trial court subsequently entered a written Order Denying Defendant's Motion to Suppress Statements, Confessions, and Admissions. (Pet. App. at A-4). In that order, the trial court, relying on *Davis v. United States*, 512 U.S. 452 (1994), concluded that Mr. Sneathen's statement to the detectives, immediately after being provided with *Miranda* warnings, was only an equivocal invocation of his right to counsel which did not require police to cease questioning. The trial court found that Mr. Sneathen's statement was the equivalent of indicating that "maybe he should have an attorney." In reaching its conclusion, the trial court cited statements Mr. Sneathen made after he made the statement requesting the assistance of counsel. (R5 at 294-297).

At trial, the State, pursuant to Fla. Stat. § 90.803(23), presented out-of-court hearsay statements of the alleged victim in which she stated that Mr. Sneathen had made her perform oral sex on him. (ST3 at 452-54, 486). The State also presented the testimony of the alleged victim. On direct examination, the alleged victim testified that Mr. Sneathen engaged in sexual activity with her, but did not provide any testimony concerning her allegedly performing oral sex on Mr. Sneathen. She testified that her hands were the only part of her body that had ever touched Mr. Sneathen's

penis. (ST3 at 381-84).

On cross-examination, the alleged victim testified that Mr. Sneathen never put his penis inside her mouth. She acknowledged that, at her second deposition, she had testified that she had never seen Mr. Sneathen's penis. She confirmed that testimony, again testifying that she had never seen Mr. Sneathen's penis. (ST3 at 394-395).

On redirect, the State asked the alleged victim whether Mr. Sneathen's penis had ever touched her mouth. She responded in the affirmative. The State then asked her, "Did it go in your mouth or touch your mouth?" The alleged victim responded by stating, "touched it." (ST3 at 403).

On recross-examination, however, Mr. Sneathen confronted the alleged victim with the fact that, during her second deposition, she had testified that he did not put his penis in her mouth. After being confronted with that fact, the alleged victim testified that she actually did not know what happened regarding the allegation of oral sex. (ST3 at 405-406).

Following her testimony, Mr. Sneathen played for the jury a portion of the alleged victim's second deposition. In that portion, the alleged victim indicated that her mouth, lips, or tongue had never touched Mr. Sneathen's penis. (ST3 at 420).

At the conclusion of the State's case, Mr. Sneathen moved for judgment of acquittal on all four counts charged in the Amended Information. Mr. Sneathen

made distinct arguments for each of the charged offenses, specifically referencing the evidence presented, or lack of evidence presented, on each offense. The trial court granted a judgment of acquittal on Count Four of the Amended Information, but denied the motion as to the remaining three counts. (ST4 at 642-659).

The jury returned a guilty verdict on the offenses charged in Counts One, Two, and Three of the Amended Information. (R6 at 485-487). The trial court imposed a sentence of life in prison on Count One of the Amended Information, and concurrent sentences of 30 years in prison on Count Two and Three. (R6 at 513-516)

Mr. Sneathen filed a timely Notice of Appeal and pursued a direct appeal of his convictions in the Fifth District Court of Appeal. In that appeal, Mr. Sneathen argued that the statements he made during his custodial interrogation by police were obtained in violation of the Fifth Amendment because he made an unequivocal invocation of his right to counsel, and the police continued to interrogate him. Mr. Sneathen also argued that his conviction for capital sexual battery on Count One (oral sex) violated the Sixth Amendment because it was based solely on hearsay evidence. The Fifth District Court of Appeal of the State of Florida affirmed Mr. Sneathen's convictions per curiam without a written opinion. (Pet. App. at A-1). The Fifth District Court of Appeal denied Mr. Sneathen's timely Motion for Rehearing and Written Opinion. (Pet. App. at A-3).

REASONS FOR GRANTING THE WRIT

I. THE TOTALITY OF THE CIRCUMSTANCES ESTABLISH THAT MR. SNEATHEN UNEQUIVOCALLY INVOKED HIS RIGHT TO COUNSEL.

The statements Mr. Sneathen made during his police interrogation were obtained in violation of his right to counsel under the Fifth and Fourteenth Amendments to the United States Constitution. The decision of the state district court to affirm Mr. Sneathen's conviction conflicts with this Court's decisions in *Davis v. United States*, 512 U.S. 452, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994), and *Smith v. Illinois*, 469 U.S. 91, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984).

Statements of a defendant obtained through police interrogation without the presence of counsel after a defendant makes an unequivocal request for an attorney are obtained in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and are not admissible at trial. *See Davis, supra*. Interrogation must cease immediately if a defendant invokes his desire to have counsel in a manner in which a reasonable police officer under the circumstances would understand the statement to be a request for an attorney. *Id.* at 459. A suspect, however, is not required to speak with the discrimination of an Oxford don when articulating his desire for the assistance of counsel. *Id.*

In the instant case, it was undisputed that Mr. Sneathen was in custody at the time he made the

statements in question. The state courts, however, erred in concluding that Mr. Sneathen's statement to the detectives was an equivocal request for an attorney. Immediately after being provided with *Miranda* warnings, and as the detective was asking him whether he wished to be questioned with or without the presence of an attorney, Mr. Sneathen made the following statement:

> **Either way that, I mean, I look at it, you guys are arresting me and locking me up. I mean, so it's probably best that I do have an attorney.**

A review of the videotape in this matter supports a conclusion that, under the circumstances, a reasonable officer would have believed that Mr. Sneathen's statement was an unequivocal invocation of his right to counsel. Here, the detective gave Mr. Sneathen the choice of proceeding with his interrogation with or without counsel. Mr. Sneathen's response clearly indicated that he was choosing the option of being provided with counsel prior to answering any questions from the detectives.

The state trial court's reliance on this Court's decision in *Davis* is misplaced. In *Davis*, the defendant used the term "maybe" when making his request for counsel. 512 U.S. at 455 ("maybe I should talk to a lawyer."). Mr. Sneathen's request for counsel did not involve similarly ambiguous language. The term "probably" used by Mr. Sneathen is far more assertive

than the term "maybe" used by the defendant in *Davis*. Moreover, under the circumstances, it is clear that Mr. Sneathen's use of that term was simply a figure of speech indicating that he did, in fact, want the assistance of counsel.

As previously indicated, this Court has held that a suspect is not required to speak with the discrimination of an Oxford don when invoking the right to counsel. *Davis*, 512 U.S. at 459. The Court's holding accounts for the reality that different people express themselves in different ways, and thus, that a suspect can unequivocally invoke the right to counsel through the use of an endless number of different statements or phrases. The circumstances of this case establish that the language used by Mr. Sneathen was simply his manner of expressing his unambiguous desire for the assistance of counsel.

The state trial court's conclusion that Mr. Sneathen's statement merely indicated that "maybe he should have an attorney," is simply not supported by the record. Under the circumstances, a reasonable police officer would have understood Mr. Sneathen's statement to be an unequivocal request for an attorney, and thus, the statement should have ceased all further questioning.

Additionally, the state trial court's reliance on statements Mr. Sneathen made subsequent to his request for counsel, to support its conclusion that the initial request was equivocal, was directly contrary to this Court's decision in *Smith*. In *Smith*, this Court explicitly held that "an accused's *postrequest* responses

to further interrogation may not be used to cast retrospective doubt on the clarity of the initial request itself." *Smith*, 469 U.S. at 100 (1984).

Therefore, the trial court's conclusion that Mr. Sneathen did not unequivocally invoke his right to counsel was in error, and the state appellate court's decision to affirm Mr. Sneathen's convictions is in direct conflict with this Court's decisions in *Davis* and *Smith*. This Court should accept jurisdiction and address the merits of the case.

II. THE STATE OF FLORIDA FAILED TO PRESENT SUFFICIENT EVIDENCE TO SUPPORT MR. SNEATHEN'S CONVICTION FOR CAPITAL SEXUAL BATTERY BECAUSE THE ALLEGED VICTIM RECANTED HER OUT-OF-COURT STATEMENTS AT TRIAL.

The state trial court should have granted a judgment of acquittal on the charge of capital sexual battery (oral sex), as alleged in Count One of the Amended Information. The hearsay testimony presented by the State, introducing the child's out-of-court hearsay statements, was insufficient to support Mr. Sneathen's conviction. The state appellate court's decision to affirm Mr. Sneathen's conviction on Count One is in conflict with this Court's decision in *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).

Based on the Fifth and Sixth Amendments to the United States Constitution, the Florida Supreme Court has repeatedly held that, if a child victim of sexual

abuse repudiates her out-of-court statements at trial, and the prosecution adduces no eyewitnesses or physical evidence of abuse, the trial court must grant a judgment of acquittal when the other evidence presented by the prosecution does not corroborate the facts alleged in the victim's repudiated statement. *See Beber v. State*, 887 So. 2d 1248 (Fla. 2004); *State v. Green*, 667 So. 2d 756, 760 (Fla. 1995); *See also Baugh v. State*, 961 So. 2d 198 (Fla. 2007).

"The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *Beber v. State*, 887 So. 2d at 1251. "Where the evidence creates only a strong suspicion of guilt or simply a probability of guilt, the evidence is insufficient to sustain a conviction." *Baugh*, 961 So. 2d at 205.

Prior inconsistent statements of a child sexual abuse victim standing alone are insufficient as a matter of law to prove guilt beyond a reasonable doubt. The use of such statements, which were not subject to cross-examination by the defendant, to support a conviction on their own, would violates a defendant's Sixth Amendment right to confrontation and cross-examination. *Beber*, 887 So. 2d at 1252-53; *State v. Green*, 667 So. 2d 756, 760 (Fla. 1995). This Court has held that the Confrontation Clause of the Sixth Amendment commands that the reliability of evidence be assessed by testing through cross-examination. *Crawford*, 541 U.S. at 61.

In Count One of the Amended Information, Mr.

Sneathen was charged with capital sexual battery by having his penis penetrate or have union with the mouth of the victim. At trial, on direct examination, the alleged victim did not provide any testimony establishing that Mr. Sneathen's penis had ever entered or touched her mouth. (ST3 at 379-386). In fact, she specifically testified that she had only touched Mr. Sneathen's penis with her hands, not any other part of her body. At one point, she even testified that she had never seen Mr. Sneathen's penis. (ST at 384).

On cross-examination, the alleged victim recanted her out-of-court statements indicating that Mr. Sneathen had put his penis in her mouth. She acknowledged that, at her second deposition, she had testified that she had never seen Mr. Sneathen's penis. She confirmed that testimony, again testifying that she had never seen Mr. Sneathen's penis. (ST3 at 395-395). On redirect, in response to suggestive, close-ended questions, the alleged victim testified that Mr. Sneathen's penis had touched her mouth. (ST3 at 403).

On recross-examination, however, Mr. Sneathen confronted the alleged victim with the fact that, during her deposition, she had testified that he did not put his penis in her mouth. After being confronted with that fact, the alleged victim recanted again, testifying that she actually did not know what happened regarding the allegation of oral sex. (ST3 at 405-406).

Following her testimony, Mr. Sneathen played for the jury a portion of the alleged victim's second deposition. In that portion, the alleged victim indicated that her

mouth, lips, or tongue had never touched Mr. Sneathen's penis. (ST3 at 420).

Therefore, at the end of her testimony at trial, the alleged victim recanted her previously made out-of-court statements at trial. *See Johnson v. State*, 1 So.3d 1164 (Fla. 1st DCA 2009) (recantation exists where child provides equivocal testimony at trial and states that he does not know whether he is telling the truth). The State did not produce any physical evidence establishing that Mr. Sneathen ever placed his penis in the alleged victim's mouth. Thus, the only evidence indicating that Mr. Sneathen committed the charged offense was the hearsay testimony introducing the alleged victim's out-of-court statements.

Since those statements were not subject to cross-examination, pursuant to *Crawford*, the statements did not possess the indicia of reliability necessary to support a conviction under the Sixth Amendment. Importantly, when the alleged victim was subject to cross-examination, at trial and at her second deposition, she recanted her previous allegation and testified that the alleged oral sex did not occur.

Once the alleged victim made that recantation at trial, Mr. Sneathen's ability to cross-examine her any further concerning this allegation was effectively terminated, because there was no other avenue to explore. The previously-made allegation had been withdrawn by the accuser.

Therefore, based on the evidence presented at trial, Mr. Sneathen's conviction for capital sexual battery, as

alleged in Count One of the Amended Information, violates the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. The state appellate court's decision to affirm Mr. Sneathen's conviction on that count is in conflict with this Court's decision in *Crawford*. This Court should accept jurisdiction and address the merits of the case.

CONCLUSION

For the aforementioned reasons, this Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

Michael J. Snure
Florida Bar No. 363235

William R. Ponall
Florida Bar No. 421634

KIRKCONNELL,
LINDSEY, SNURE
AND YATES, P.A.
P.O. Box 2728
Winter Park, FL 32790
Telephone: (407) 644-7600
Facsimile: (407) 645-0805

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STATE OF FLORIDA,

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APPENDIX

Michael J. Snure
Florida Bar No. 363235
William R. Ponall
Florida Bar No. 421634
KIRKCONNELL, LINDSEY,
SNURE AND YATES, P.A.
Post Office Box 2728
Winter Park, Florida 32790
(407) 644-7600

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA FIFTH DISTRICT
JULY TERM 2008

GEORGE C. SNEATHEN,

Appellant,

v. Case No. 5D07-924

STATE OF FLORIDA

Appellee.
_____/

Decision filed November 18, 2008

Appeal from the Circuit Court
for Orange County,
Lisa T. Munyon, Judge.

Michael J. Snure and William R. Ponall
of Kirkconnell, Lindsey, Snure and Yates,
P.A., Winter Park, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Kristen L. Davenport,
Assistant Attorney General, Daytona

Beach for Appellee

PER CURIAM.

AFFIRMED.

GRIFFIN, TORPY and EVANDER, JJ., concur.

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA FIFTH DISTRICT

GEORGE C. SNEATHEN,

Appellant,

v. Case No. 5D07-924

STATE OF FLORIDA

Appellee.

_____/

DATE: January 6, 2009

BY ORDER OF THE COURT:

ORDERED that Appellant's Motion for Rehearing and Written Opinion, filed December 3, 2008, is denied.

I hereby certify that the foregoing is
(a true copy of) the original Court order

Susan Wright (signature over Seal of Court)
SUSAN WRIGHT, CLERK

cc: William R. Ponall, Esq.
Office of the Attorney General, Daytona Beach

IN THE CIRCUIT COURT OF
THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY,
FLORIDA

CASE NO: 48-2005-CF-7187-O

STATE OF FLORIDA, DIVISION: 19

Plaintiff,

v.

GEORGE C. SNEATHEN,

Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS STATEMENTS, CONFESSIONS, AND ADMISSIONS

THIS CAUSE having come to be heard before this Court on January 20, 2006, on Defendant's Motion to Suppress Statements, Confessions, and Admissions, and this Court having heard the evidence presented at the hearing and the arguments of counsel and being otherwise fully advised in the premises, the Court hereby finds as follows:

The defendant was charged by information with two counts of capital sexual battery and two counts of Lewd or Lascivious Molestation from events alleged to have occurred between January 1 and May 27, 2005. On June 1, 2005, defendant was arrested on the above charges and questioned by detectives of the Orange County Sheriff's Office. The interview was video taped and both parties agree that the defendant was in custody at the time of the interrogation. The defendant entered the videotape into evidence which has been reviewed by the court at the request of the parties.

At the beginning of the interrogation, the detective explained to defendant that he would be reading his *Miranda* warnings. Before reading the *Miranda* warnings, the detective informed defendant that if he asked for a lawyer, they (meaning the detectives) could not talk to him, and that defendant could at any time stop the conversation. Thereafter, the detective inquired about defendant's educational background. Defendant indicated that he had completed the tenth grade, but went back and received his high school diploma. Defendant confirmed that he was not taking any medication. Defendant then read the *Miranda* warnings aloud to the detectives and indicated that he understood the warnings. The detectives then requested that defendant answer the questions at the end of the *Miranda* warning that

defendant had just read. The detective read to defendant, "Do you decide to consult with an attorney first or have one during this interview, yes or no. If you say yes, then we won't talk, we'll just end it here but if you want to talk to us then..." Defendant interrupted, "Either way that, I mean, I look at it, you guys are arresting me and locking me up. **I mean, so it's probably best that I do have an attorney**." (Emphasis added.) The detective responded, "so you don't want to talk to us then?" Defendant responded, "Well, I mean, I wanted to state what happened. I did want to tell you guys that. I don't want you to get the wrong impression. It's not like it...Some things are true, some things are not true. I did want to tell you guys. Either way you guys are locking me up. You know that."[1] The detective stated, "Not necessarily because some things are probably going to be explainable, but we don't know that unless we talk to you." The detective went on to emphasize that they were not going to force defendant's story out of him and that all questioning would cease if he wanted an attorney. For several minutes further, the defendant and detective spoke about whether defendant wished

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[1] The above was taken from the tape by the court. The court did not have a transcript of the tape and the statements are missing a few "I mean" and "you know" that are thrown in by the speaker as surplusage without any real meaning.

to waive his *Miranda* warnings. Defendant asked if he could talk, and then if he decided later that he wanted an attorney, end the interview at that time. The detectives indicated that he could and told him that they would not take offense to stopping the interview. Before continuing the interview, the detectives went back to the question on the form regarding whether defendant wanted an attorney. Before making any statements, defendant visibly examined the form, appeared to be silently weighing his options, asked additional questions about the process which were answered by the detectives, and signed the *Miranda* waiver. Defendant went on to make a statement.

Defendant argues that his statement that "it's probably best that I do have an attorney" is an unequivocal invocation of his fifth amendment right to counsel whereupon all questioning should have ceased. The State argues that the statement is, at best, an equivocal request for counsel and that the detective did not impinge upon defendant's constitutional rights by clarifying whether defendant wanted counsel.

In custodial interrogations, the warning set forth in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), must be given. If a suspect makes an unequivocal request for counsel, all questioning must cease until counsel is provided. *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed2d 378 (1981). "If a suspect's statement is not an

unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning." *Davis v. United States*, 512 U.S. 452, 461-462, 114 S.Ct. 2350, 129 L.Ed2d 362 (1994).

In *Davis*, the statement which Davis asserted invoked his right to counsel was "maybe I should talk to a lawyer." The United States Supreme Court found that this was not an unambiguous or unequivocal request for counsel. In *Long v. State*, 517 So.2d 664 (Fla. 1987), *cert denied*, 486 U.S. 1017 (1988)(portions of holding abrogated by *Davis v. U.S., supra*), the Florida Supreme Court found the statement, "I think I might need an attorney," to be equivocal.

In the instant case, the detective had told defendant explicitly how to invoke his right to counsel. The detective told defendant that if said yes (in answer to the question if he wanted an attorney) then they would not talk further and would end the interview there. Defendant equivocated indicating that if he was going to jail anyway, maybe he should have an attorney. Rather than moving on or ignoring defendant's concerns, the detective clarified by confirming that defendant did not want to talk to them. Defendant indicated that he did wish to speak to the detectives, and ultimately waived the right to could both verbally and in writing. Defendant did not make an unambiguous or unequivocal request for counsel. The detectives did not violate defendant's

fifth amendment right to counsel by continuing the interview. Based upon the foregoing, it is therefore,

ORDERED AND ADJUDGED that the Defendant's Motion to Suppress Statements, Confessions, and Admissions should be and the same is hereby DENIED.

DONE AND ORDERED in chambers, Orlando, Orange County, Florida, this 22nd day of February, 2006.

_____

LISA T. MUNYON
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail delivery to William Busch, Assistant State Attorney, 415 North Orange Avenue, Orlando, Florida, 32801, and to Michael Snure, Esquire, 1150 Louisiana Avenue, Suite 1, P.O. Box 2728, Winter Park, Florida, 32790, this _____ day of February, 2006.

_____

Judicial Assistant